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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/296,120

04/21/1999

THOMAS J. REDDIN

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04/06/2009

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EXAMINER

JANVIER, JEAN D

ART UNIT

PAPER NUMBER

3688

MAIL DATE

DELIVERY MODE

04/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS J. REDDIN, GLENDA M. BEHRLE,
ROBERT J. GFELLER, LAUREL M. KIMBROUGH, RODNEY D.
TABERT, THOMAS C. McTHENIA, JR., and DANIEL J. WARREN

Application 09/296,120
Technology Center 3600

Mailed: April 6, 2009

Before DALE M. SHAW, *Chief Appeals Administrator*
SHAW, *Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on March 31, 2008, following a remand to the examiner on March 20, 2009, in order to clarify the record. This is due to the Examiner entering a Supplemental Examiner's Answer on December 5,

2008. On January 30, 2009, Appellants timely filed a request to reopen prosecution pursuant to 37 C.F.R. § 41.39(b)(1), which states:

(b) If an examiner's answer contains a rejection designated as a new ground of rejection, appellant must within two months from the date of the examiner's answer exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the claims subject to the new ground of rejection:

(1) *Reopen prosecution.* Request that prosecution be reopened before the primary examiner by filing a reply under § 1.111 of this title with or without amendment or submission of affidavits (§§ 1.130, 1.131 or 1.132 of this title) or other evidence. Any amendment or submission of affidavits or other evidence must be relevant to the new ground of rejection. A request that complies with this paragraph will be entered and the application or the patent under ex parte reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. Any request that prosecution be reopened under this paragraph will be treated as a request to withdraw the appeal.

On March 25, 2009, the examiner filed a form PTOL-90 ("paper") which states:

"The Reply Brief filed on January 30, 2009 has been considered. However, the claim amendment filed with the Reply Brief will not be entered. Here, although the Appellant states that the amendment to the claim is an attempt to address or overcome the 101 rejection based on *Bilski*, however, upon reviewing the said claim amendment, the Examiner notes that the amendment does not address the 1010 rejection and that it is simply an attempt to introduce new elements in the claims after the Examiner's Answer was issued. Thus, the amendment will not be entered. Finally, the Application will be

forwarded to the Board of Patent Appeal and Interferences for decision on the Appeal based on the previously filed claims considered during the Examiner's Answer."

However, it is noted that there was no Reply Brief filed in response to the Supplemental Examiner's Answer mailed December 5, 2008. The only response to the Supplemental Examiner's Answer is the Paper entitled "Reply to Examiner's Answer & Request To Reopen Prosecution". Accordingly, this application is returned to the Examiner to Reopen Prosecution in accordance with 37 CFR §41.39(b)(1).

Accordingly, it is

ORDERED that the application is returned to the Examiner to enter the reopen prosecution in accordance with 37 CFR §41.39(b)(1).

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/ewh

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